

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAISH MARKOS, *individually on behalf of
himself and all others similarly situated,*

Plaintiff,

– against –

RUSSELL BRANDS, LLC,

Defendant.

No. 7:16-cv-04362-CS

DECLARATION OF JASON SULTZER IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Pursuant to 28 U.S.C. § 1746, I, Jason Sultzer, declare as follows:

1. I am an attorney admitted since 1997 to practice in New York, and I am counsel of record for Plaintiff Jaish Markos.

2. I have personal knowledge of the facts stated below. If called upon to do so, I could and would competently testify thereto.

3. I make this declaration in support of Plaintiff's Opposition to Defendant's Motion for Summary Judgment.

4. Attached hereto as **Exhibit 1** is a true and accurate copy of Defendant's Response to Plaintiff's First Set of Interrogatories.

5. Attached hereto as **Exhibit 2** is a true and accurate copy of the transcript of the August 30, 2017, deposition of Paul Sullivan.

6. Attached hereto as **Exhibit 3** is a true and accurate copy of documents bearing Bates numbers Russell_00701 and Russell_00756–Russell_00763, all of which Defendant produced in discovery in this case.

7. Attached hereto as **Exhibit 4** is a true and accurate copy of a PDF containing two

screenshots of a document bearing Bates stamp Russell_00274, which Defendant produced in discovery and has stated is the website shop.spalding.com.

8. Attached hereto as **Exhibit 5** is a true and accurate copy of the transcript of the April 4, 2017, deposition of Plaintiff Jaish Markos.

9. Attached hereto as **Exhibit 6** is a true and accurate copy of the pre-suit letter and draft complaint which Plaintiff's counsel mailed to Defendant on February 5, 2016.

10. Attached hereto as **Exhibit 7** is a true and accurate copy of documents bearing the Bates numbers Russell_07922, Russell_07924, Russell_02167–Russell_02168, and Russell_07826–Russell_07827, all of which Defendant produced in discovery in this case.

11. Attached hereto as **Exhibit 8** is a true and accurate copy of the transcript of the September 13, 2017, deposition of Lynn Smith.

12. Attached hereto as **Exhibit 9** is a true and accurate copy of the August 31, 2017, deposition of Brian Collins.

13. Attached hereto as **Exhibit 10** is a true and accurate copy of the December 1, 2017, i3 Engineering Sciences LLC Independent Test Report, by Jeffrey McFadden.

14. Attached hereto as **Exhibit 11** is a true and accurate copy of the December 1, 2017, Report on Evaluation of Spalding NeverFlat Basketballs by Stuart B. Brown of Veryst Engineering, LLC.

15. Attached hereto as **Exhibit 12** is a true and accurate copy of the transcript of the January 25, 2018, deposition of Stuart B. Brown, Ph.D., on behalf of Veryst Engineering, LLC.

16. Attached hereto as **Exhibit 13** is a true and accurate copy of the transcript of the January 10, 2018, deposition of Jeffrey McFadden on behalf of i3 Engineering Sciences LLC.

17. Attached hereto as **Exhibit 14** is a true and accurate copy of a document bearing

the Bates numbers Russell_00252–Russell_00269, which Defendant produced in discovery in this case.

18. Attached hereto as **Exhibit 15** is a true and accurate copy of a document bearing the Bates numbers Russell_00362–Russell_00363, which Defendant produced in discovery in this case.

19. Attached hereto as **Exhibit 16** is a true and accurate copy of a document bearing the Bates number Russell_07066, which Defendant produced in discovery in this case.

20. Attached hereto as **Exhibit 17** is a true and accurate copy of the December 1, 2017, Declaration of Colin B. Weir.

21. Attached hereto as **Exhibit 18** is a true and accurate copy of a document bearing the Bates numbers Russell_00358–Russell_00361, which Defendant produced in discovery.

22. Attached hereto as **Exhibit 19** is a true and accurate copy of a document bearing the Bates numbers Russell_00282–Russell_00300, which Defendant produced in discovery and which was marked as Exhibit 2 to the deposition of Brian Collins.

23. Attached hereto as **Exhibit 20** is a true and accurate copy of a document bearing the Bates numbers Russell_06812–Russell_06815, which Defendant produced in discovery and which was marked as Exhibit 3 to the deposition of Brian Collins.

24. Attached hereto as **Exhibit 21** is a true and accurate copy of a document bearing the Bates numbers Russell_06809–Russell_06811, which Defendant produced in discovery and which was marked as Exhibit 4 to the deposition of Brian Collins.

25. Attached hereto as **Exhibit 22** is a true and accurate copy of a document bearing the Bates numbers Russell_00027–Russell_00036, which Defendant produced in discovery and which was marked as Exhibit 1 to the deposition of Paul Sullivan.

26. Attached hereto as **Exhibit 23** is a true and accurate copy of Plaintiff's proof of purchase of a Neverflat basketball from Amazon.com LLC on August 23, 2015.

27. Attached hereto as **Exhibit 24** is a true and accurate copy of the transcript of the September 14, 2017, deposition of Angie Doig.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 20th day of July, 2018 at Poughkeepsie, New York.

/s/ Jason P. Sultzer
Jason P. Sultzer, Esq.
The Sultzer Law Group, P.C.
85 Civic Center Plaza, Suite 104
Poughkeepsie, NY 12601
Phone: (845) 483-7100
Facsimile: (888) 749-7747